



JUN - 6 2014



The Honorable Rick Perry
Governor of Texas
P.O. Box 12428
Austin, Texas 78711

Dear Governor Perry:

Thank you for your January 17, 2014, letter to the Department of the Army and the U.S. Environmental Protection Agency regarding the agencies' joint rulemaking to clarify the jurisdiction of the Clean Water Act.

The agencies released a proposed rule on March 25, 2014, in order to provide additional clarity regarding the geographic scope of CWA jurisdiction and to improve national consistency and predictability. The agencies took this step in response to requests from a broad range of interests including members of Congress, states, industry, agriculture, environmental groups, and other stakeholders that we clarify the geographic scope of CWA jurisdiction through formal notice and comment rulemaking. The proposed rule will be open for public comment until July 21, 91 days after it was published in the Federal Register on April 21, 2014.

We respect and appreciate states' efforts as co-regulators as we both strive to protect aquatic resources. State governments have well-defined and longstanding relationships in implementing affected CWA programs and our agencies have undertaken the rulemaking process in a way that has recognized these strong relationships. As we developed the draft proposed rule, our agencies held several in-person meetings and numerous phone calls with state associations and state and local government agencies to seek input. During this process, the State of Texas as well as other state and local governments identified a number of issues, which our agencies have considered in developing the proposed rule.

As part of our work to develop a proposed rule, the agencies voluntarily undertook Federalism consultation, holding a series of meetings and outreach calls with state and local governments and their representatives soliciting input on a potential rule, and the agencies considered the written and oral comments from state and local governments when developing the proposed rule. As part of this effort, we consulted with the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the County Executives of America, the National Associations of Towns and Townships, the International City/County Management Association, and the Environmental Council of the States. In addition, we also invited the National Association of Clean Water Agencies, the Western Governors' Association and the Association of Clean Water Administrators to participate. As part of this effort, we asked participants to provide input on what should be contained in a proposed rule and what areas of the definition of "waters of the United States" needed additional clarity. We received written comments from twelve counties, eight associations, and agencies from Texas and five other states. In their written and oral comments, state and local governments identified a number of issues, including concerns about state authority over water rights, the jurisdictional status of groundwater, and

the overall scope and extent of jurisdiction. More than 400 people participated in these discussions, and participants represented a wide variety of state and local agencies and associations, including the Western Governors' Association and the Western States Water Council.

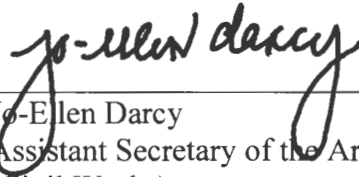
We look forward to further engagement with Texas and other state partners now that we have released a proposed rule for public comment. During the 91-day public comment period, we welcome additional comments from states and other stakeholders. We have also begun additional outreach with state and local government officials and associations to review states' prior comments and to discuss how the agencies addressed such concerns in the proposed rule. We look forward to additional dialogue with states and other stakeholders across the country in the coming weeks. We will ensure the procedures we follow throughout our rulemaking process are as transparent as possible and consistent with the Administrative Procedure Act and other applicable requirements. Additionally, the agencies will include with the final rule a detailed narrative of intergovernmental concerns raised during the course of the rule's development and a description of the agencies' efforts to address them.

Thank you again for your letter. If you have further questions or concerns, please contact us or your staff may call Mark Rupp, Deputy Associate Administrator for Intergovernmental Relations, at rupp.mark@epa.gov or (202) 564-7178; or Mr. Chip Smith in the Office of the Assistant Secretary of the Army (Civil Works) at charles.r.smith567.civ@mail.mil or (703) 693-3655.

Sincerely,



Gina McCarthy
Administrator
U.S. Environmental Protection Agency



Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)